

Message Text

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42

ORIGIN EB-11

INFO OCT-01 ARA-16 ISO-00 CAB-09 CIAE-00 COME-00 DODE-00

DOTE-00 INR-10 NSAE-00 RSC-01 FAA-00 FEAE-00 L-03

DRC-01 /052 R

DRAFTED BY EB/OA/AVP:JCOOK:JO

APPROVED BY EB/OA/AVP:DBORTMAN

EB/AN - MR. PAZDRAL

ARA/NC - MR. KRANZ

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R 101225Z JUL 74

FM SECSTATE WASHDC

TO AMEMBASSY BOGOTA

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E.O. 11652: N/A

TAGS: ETRN, CO

SUBJECT: CIVAIR - BRANIFF FUEL PROBLEM

REF : (A) BOGOTA 5292 (B) STATE 11745 (C) BOGOTA 4677

1. DEPT APPRECIATES EMBASSY'S CONCERN ABOUT POSSIBILITY THAT GOC MIGHT ALLEGE THAT AVIANCA IS SIMILARLY DISCRIMINATED AGAINST WITH RESPECT TO FUEL PRICES IN U.S. HOWEVER, WE BELIEVE SITUATIONS ARE NOT COMPARABLE. AN INTENT TO DISCRIMINATE CANNOT BE INFERRED SIMPLY FROM EXISTENCE OF PRICE DIFFERENTIALS, SUCH AS REPORTED IN REFTEL. BECAUSE AVIANCA'S FUEL PRICES WERE NEGOTIATED WITH INDEPENDENT PRIVATE U.S. COMPANIES, TO SUSTAIN CHARGE OF DISCRIMINATION, IT WOULD HAVE TO PROVE COLLUSION AMONG ALL U.S. SUPPLIERS AT THOSE POINTS. MOREOVER, IT SHOULD BE NOTED THAT IF AVIANCA CAN SUPPORT A CHARGE OF COLLUSION OR DISCRIMINATORY PRICING BY U.S. SUPPLIERS, THIS COULD CONSTITUTE A VIOLATION OF U.S. LAWS AND SHOULD BE BROUGHT TO THE ATTENTION OF THE U.S. AUTHORITIES. ON THE OTHER HAND, DEPT BELIEVES THAT AN INTENT TO DISCRIMINATE CAN

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BE INFERRED WITH RESPECT TO SITUATION AT BOGOTA FROM SIZE

OF "DISCOUNT" GIVEN TO AVIANCA, AND GOVERNMENT'S CONTROL OVER BOTH ECOPETROL (THE SOLE AVAILABLE FUEL SUPPLIER) AND AVIANCA. IT IS OUR VIEW THAT THESE FACTS SPEAK FOR THEMSELVES TO SUPPORT BRANIFF'S CHARGE OF DISCRIMINATION AND THAT BURDEN OF PROVING LEGITIMATE COMMERCIAL REASONS FOR DISCOUNT SHOULD BE ON GOC WHICH IS IN CONTROL OF ALL DATA AND, SIGNIFICANTLY, IS A PARTY IN INTEREST.

2. FOR THE ABOVE REASONS, DEPT BELIEVES THAT FORMAL REPRESENTATION TO GOC BASED ON FACTS CONTAINED IN REFTELS IS JUSTIFIED. USING WHATEVER CHANNEL(S) DEEMED APPROPRIATE, EMBASSY IS REQUESTED TO MAKE FORMAL PROTEST TO GOC PER INSTRUCTIONS IN REFTEL (B). KISSINGER

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Message Attributes

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Disposition Approved on Date:
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Disposition Case Number: n/a
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